

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

VICTOR TAGLE,

Plaintiff,

v.

DEPARTMENT OF HOMELAND  
SECURITY,

Defendant.

Case No. 2:15-cv-02506-APG-VCF

**ORDER ON REPORT AND  
RECOMMENDATION**

(ECF No. 12)

On April 5, 2016, Magistrate Judge Ferenbach entered a report and recommendation that I dismiss Tagle's complaint with prejudice. ECF No. 12. Tagle did not file an objection. Thus, I am not obligated to conduct a de novo review of the report and recommendation. 28 U.S.C. § 636(b)(1) (requiring district courts to "make a de novo determination of those portions of the report or specified proposed findings to which objection is made"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not otherwise" (emphasis in original)).

I nevertheless conducted a de novo review. 28 U.S.C. § 636(b)(1). Tagle's complaint is difficult to understand but he appears to be requesting this court naturalize him as a United States citizen. As Judge Ferenbach noted in his report and recommendation, district courts no longer have the power to naturalize in the first instance. ECF No. 12 at 2.

However, district courts have some limited jurisdiction to review naturalization petitions where the Attorney General denies the petition or where the naturalization decision is not timely made. *See* 8 U.S.C. §§ 1421(c), 1447(b). Tagle does not allege he is seeking review of the denial of his naturalization petition after a hearing before an immigration judge or that the defendant failed to timely decide his naturalization application. Indeed, he does not allege he ever filed a

1 naturalization petition with the Attorney General. Instead, he references various interactions he  
2 has had with Immigration and Naturalization Service directors and other agency personnel  
3 throughout the years. I therefore dismiss his complaint.

4 However, I will grant Tagle another opportunity to allege facts, if such facts exist, that he  
5 previously submitted an application for naturalization to the Attorney General under 8 U.S.C.  
6 § 1445(a), and either:

7 (1) that application was denied (and the reason for that denial)<sup>1</sup> after a hearing with an  
8 immigration officer under 8 U.S.C. § 1447(a), and Tagle seeks review of that denial under  
9 8 U.S.C. § 1421(c); or

10 (2) the Attorney General has not made a determination, more than 120 days have passed  
11 since the examination required under § 1446, and Tagle requests this court to determine  
12 the matter under 8 U.S.C. § 1447(b).

13 Tagle's amended complaint, if one is filed, must allege such facts with specificity. But if Tagle  
14 never submitted a naturalization application to the Attorney General, I cannot consider his request  
15 that this court naturalize him.

16 IT IS THEREFORE ORDERED that Magistrate Judge Ferenbach's report and  
17 recommendation (**ECF No. 12**) is **accepted with the modification** that I will grant Tagle another  
18 opportunity to amend his complaint consistent with the directions in this order. Tagle must file  
19 his amended complaint **on or before June 3, 2016** or his complaint will be dismissed with  
20 prejudice.

21 DATED this 3<sup>rd</sup> day of May, 2016.

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24 \_\_\_\_\_  
25 ANDREW P. GORDON  
26 UNITED STATES DISTRICT JUDGE

27 <sup>1</sup> Where the administrative denial is made under § 1429 based on pending removal proceedings,  
28 my review is limited to that determination, not a review of the merits of the naturalization petition. *De Lara Bellajaro v. Schiltgen*, 378 F.3d 1042, 1046-47 (9th Cir. 2004), *as amended* (Sept. 1, 2004).